

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENITO JULIAN LUNA,

Petitioner,

No. CIV S-04-0627 FCD GGH P

vs.

SCOTT KERNAN,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding with appointed counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 14, 2004, the undersigned granted petitioner's motion to voluntarily dismiss this case without prejudice.<sup>1</sup> On June 3, 2011, petitioner filed a first amended petition for writ of habeas corpus. Petitioner indicates that he returned to state court to exhaust additional claims, however it appears that those claims were exhausted when the California Supreme Court denied a petition on July 18, 2007. It is not clear what has transpired in the four years since the California Supreme Court denied the petition, or why petitioner waited to re-file in federal court. The court ordered petitioner to show cause why the petition should not be

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<sup>1</sup> Respondent has never been served with this petition.

